

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of )  
 )  
Rulemaking to Amend Parts 1, 21, and 25 )  
of the Commission's Rules to Redesignate )  
the 27.5-29.5 GHz Frequency Band, to )  
Reallocate the 29.5-30.0 GHz Frequency )  
Band, to Establish Rules and Policies for )  
Local Multipoint Distribution Service and )  
for Fixed Satellite Services )

CC Docket No. 92-297

DOCKET FILE COPY ORIGINAL

TO: The Commission

**OPPOSITION OF GE AMERICAN COMMUNICATIONS, INC.  
TO PETITION FOR PARTIAL RECONSIDERATION**

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby opposes the Petition for Partial Reconsideration of the First Report & Order<sup>1</sup> in the above-captioned proceeding that was filed by Motorola Satellite Communications, Inc. ("Petition").

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<sup>1</sup> FCC 96-311 (released July 22, 1996) ("Order").

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## INTRODUCTION

Motorola asks the Commission to modify new Section 25.258 of its rules, which reflects the sharing criteria for the 29.25-29.50 GHz band. Motorola specifically objects to the requirements regarding nodal regression in subsection 25.258(c) and to statements in the *Order* suggesting that Motorola cannot operate its feeder links in the 29.25-29.50 GHz band. Motorola proposes that the Commission instead permit any NGSO/MSS provider to use this band subject only to coordination with GSO/FSS providers on a first come, first served basis.

Motorola's proposal should be rejected out of hand as inconsistent with the fundamental goals of the *Order*. The compromise sharing proposal embodied in Section 25.258 was an essential part of the overall solution the Commission devised to accommodate the spectrum requirements of a range of services. Allowing use of the 29.25-29.50 GHz band by NGSO/MSS operators subject to coordination on a first come, first served basis would effectively deny GSO/FSS providers the full 1000 MHz that they require for their systems. It thereby would upset the delicate balance represented in the final band plan -- a plan that was the product of lengthy negotiations among the parties, and hundreds of hours of work by the Commission. Motorola rests its Petition entirely on a groundless "notice" argument, ignoring its own active participation in negotiations among the parties. The crucial GSO/FSS requirement for 1000 MHz should be respected, and Motorola's Petition should be summarily denied.

**I. MOTOROLA'S REQUEST FOR FIRST COME,  
FIRST SERVED COORDINATION IN THE  
29.25-29.50 GHZ BAND MUST BE REJECTED**

Motorola describes the Commission's Ka-band spectrum segmentation plan as a "masterwork in compromise in an unprecedented spectrum allocation proceeding." Petition at 2. GE Americom fully agrees with this characterization. In the *Order*, the Commission balanced the competing spectrum demands of prospective LMDS, NGSO/FSS, NGSO/MSS and GSO/FSS providers. After putting forth an initial band plan, the Commission staff proposed a number of alternatives and considered plans submitted by individual parties as well. The staff convened a series of status conferences to permit all interested parties to debate the merits of the various proposals. In the end, the Commission adopted a solution based on its original plan -- a solution that was supported by a broad array of commenting parties. *See Order* at n. 87.

The sharing agreement regarding use of the 29.25-29.50 GHz band was an essential part of this solution. The Commission has consistently recognized that 1000 MHz must be available in order to permit operation of multiple GSO/FSS systems in the Ka-band. *See Order* at ¶ 58 (citing *Third NPRM*). Under the band plan adopted by the Commission, 750 MHz is allocated to GSO/FSS on an exclusive primary basis. To complete the necessary 1000 MHz, the Commission also allocated 250 MHz (29.25-29.50 GHz) to GSO/FSS. *Order* at ¶ 57. As part of the overall band compromise, NGSO/MSS feeder links received co-primary allocation for this band segment. *Id.* However, the Commission did so with the clear understanding that

feeder link operations would not create a significant impediment to GSO/FSS use of the 29.25-29.50 GHz band. The sharing proposal put forth by TRW and supported by Ka-band GSO/FSS applicants places conditions on the use of this sub-band by GSO/FSS providers, but they are conditions that can be met without significantly limiting our ability to use the spectrum.<sup>2</sup>

In contrast, Motorola's proposal to rely on first come, first served coordination in this sub-band would essentially preclude GSO/FSS use of this spectrum. As GE Americom and other GSO/FSS applicants have repeatedly shown, first come, first served coordination would effectively give GSO/FSS secondary status in the 29.25-29.50 GHz band.<sup>3</sup> Specifically, because MSS providers are already licensed, they have a substantial headstart over GSO/FSS applicants. As a result, MSS operators would have no incentive to take steps to prevent interfering with GSO/FSS transmissions, making this band virtually useless to GSO/FSS providers.

The impact on GSO/FSS operations would be enormous. Hughes demonstrated that the "exclusion zone" around a single feeder link site for Motorola's Iridium system would encompass nearly all of the states west of the

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<sup>2</sup> Motorola attempts to characterize the rule as one "that meets the sharing needs of only two private parties," TRW and Hughes. Petition at 4. However, the Commission well knows that the rule, while flowing from work done by TRW, was fully scrutinized by all parties, and reflects a consensus solution to the GSO/FSS-MSS sharing issue that best balances the public interest.

<sup>3</sup> See, e.g., GE Americom Comments in CC Docket No. 92-297 at 9-10; Hughes Comments at 12 (Sept. 7, 1995).

Mississippi. Hughes Comments at 14-15. Motorola agreed that co-frequency, co-geographic sharing between MSS feeder links and GSO/FSS systems is not possible without significant restrictions on the number and size of FSS terminals. Motorola Comments at 11.

In its Petition, Motorola completely ignores the record evidence -- including its own previous arguments -- regarding first come, first served coordination between MSS feeder links and GSO/FSS operations. It does not make any attempt to dispute the Commission's assertion that the Iridium system cannot share spectrum with GSO/FSS. *See Order* at ¶ 63. Its failure to address the impact of a first come, first served rule on use of this sub-band merely highlights the self-serving nature of Motorola's Petition. Motorola knows that it cannot share with GSO/FSS systems, so its only hope is to get to the spectrum first, and then insist that the GSO/FSS systems accommodate Iridium.

The Commission cannot accept such a clearly one-sided proposal in the name of "sharing." In fact, the Commission expressly declined to adopt coordination on a first come, first served basis in the *Order*. Instead, the Commission adopted rules for the 29.25-29.50 GHz band based on negotiations among the parties, rules that reflect "mutually acceptable sharing principles." *Order* at ¶ 72.

Motorola has provided no reason for the Commission to reverse that decision. To the contrary, it is clear that permitting use of the 29.25-29.50 GHz band by MSS feeder links based on first come, first served coordination with GSO/FSS operations would substantially limit the ability of GSO/FSS providers to

use this band. As a result, the Commission's objective of providing 1000 MHz for GSO/FSS services in the Ka-band would be thwarted, and the delicate balance the Commission achieved in the *Order* would be destroyed.

## **II. THE COMMISSION PROPERLY TOOK INTO ACCOUNT THE CONSENSUS SHARING AGREEMENT IN FORMULATING ITS RULES**

In support of its attack on the sharing provisions adopted by the Commission for the 29.25-29.50 GHz band, Motorola suggests that it was inappropriate for the Commission to base rules on the sharing agreement negotiated among the parties. However, Motorola fundamentally mischaracterizes the nature of that agreement.

First, Motorola repeatedly suggests that the compromise proposed by TRW and Hughes only meets the sharing needs of those two parties. *See, e.g.*, Petition at 4, 8. Again, however, the sharing agreement received broad support from other GSO/FSS applicants, including GE Americom. *See Order* at ¶ 72.

More fundamentally, however, Motorola ignores the practical reality that was facing the Commission. The TRW proposal was the only workable sharing arrangement that was suggested. Motorola did not come forward with an alternative plan that would have allowed its system to share spectrum with GSO/FSS operations. To the contrary, as noted above, Motorola took the position that sharing was impossible absent severe restrictions on the use of the 29.25-29.50 GHz band by GSO/FSS providers.

In these circumstances, it was clearly appropriate for the Commission to base its sharing rules for this band on the TRW proposal. The requirements adopted by the Commission establish a framework for sharing based on the only proposal in the record that was acceptable to providers of both GSO/FSS and NGSO/MSS. Motorola suggests that other means of achieving sharing may be feasible, Petition at 11, but does not introduce any concrete proposals for doing so. The Commission was justified in basing its rules on reality, not on the theoretical possibility of alternative sharing methods.<sup>4</sup>

**III. MOTOROLA HAS NOT JUSTIFIED ITS FAILURE TO RAISE ITS OBJECTIONS PRIOR TO ADOPTION OF THE *ORDER***

Finally, Motorola has not adequately explained why it waited until after the Commission adopted the *Order* to express its opposition to the sharing principles embodied in the rule. Motorola acknowledges that it “did not previously comment” on the issues raised in the Petition, but blames this failure on the inadequacy of the notice provided by the Commission. Petition at 3 n.4.

This allegation is absurd. Motorola was present along with other interested parties at the status conference called by the Commission on February 5

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<sup>4</sup> Motorola particularly objects to the Commission’s inclusion of nodal regression requirements in subsection 25.258(c) of the rules. Motorola argues that such requirements were designed to meet unique characteristics of TRW’s Odyssey system, and unnecessarily preclude alternative sharing mechanisms. However, the fact remains that Motorola has never suggested an effective alternative that would permit Iridium to share spectrum with GSO/FSS providers, either with or without the use of nodal regression. Its complaints about subsection 25.258(c) are moot because Motorola cannot meet the other sharing requirements of that section.

during which the TRW proposal was originally discussed -- more than five months before the *Order* was adopted. Motorola also was present at other substantive discussions of that sharing proposal. Thus, it cannot claim that it lacked actual knowledge of the facts of the proposal. The provisions that Motorola now complains of -- the restrictions in that sharing agreement, including the nodal regression provision -- were stated clearly in the proposal's text.

In short, Motorola was fully aware of both the contents of the proposed sharing plan and the fact that the Commission was considering incorporating that plan into its spectrum segmentation framework. Under these circumstances, its attempt to hide behind a notice argument is disingenuous at best.

Motorola had numerous opportunities to voice any objections to the sharing agreement for the 29.25-29.50 GHz band. Had it done so, the Commission could have considered Motorola's arguments in the context of the overall balancing of interests required to formulate the Ka-band spectrum plan. However, Motorola remained silent. It must not now be permitted to benefit from that silence by seeking a fundamental alteration in the Commission's plan that will benefit only Motorola.

## CONCLUSION

The relief Motorola requests is inconsistent with the Commission's determination that GSO/FSS providers must be allocated 1000 MHz of usable

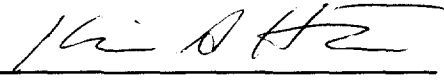


spectrum. The sharing rules adopted by the Commission for the 29.25-29.50 GHz band are based on mutual agreement, and should be maintained.

Respectfully submitted,

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October 21, 1996

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing "Opposition of  
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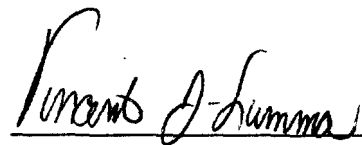
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